The language of the amendment of 1907[9] is, "no action pending against any corporation shall abate." This does not authorize an action to be begun against a corporation in the corporate name after forfeiture of its charter by failure to pay the state license tax.[10] The language of the amended act, "pending against" a corporation, would likewise seem to exclude a corporation plaintiff from continuing an action in its corporate name after forfeiture of its charter under the act.[11] But the proviso, "no action shall abate" has been construed to allow a corporation the correlative right of defending, especially prosecuting an appeal, in the name of the corporation.[12] The amendment, moreover, only applies to cases of forfeiture of a corporation charter for failure to pay the state corporation license tax; so that for all other cases of involuntary dissolution, such as quo warranto proceedings, or expiration of charter, and all cases of voluntary dissolution, the only remedy is against the directors or manager of the affairs of the corporation at the time of its dissolution. The practical difficulties involved in this latter method of procedure, such as the difficulty of finding out who are directors, are pointed out in a previous number of this Review.[13] We again suggest the remedy there proposed, which now exists in many states, namely, a statute "forfeiting the right of the corporation to do business but preserving its existence for two years at least for the sole purpose of suing and being sued."

T. J. L.

Corporations: Transfer of Entire Business: Stockholder's Consent.—How much of its property can a corporation in this state alienate without obtaining the consent of its stockholders? A recent decision[1] throws some light on the question by deciding that it can convey without the consent of its stockholders all of its real property when that is the only tangible property owned by it.

In the absence of legislative restrictions, it was the law in this state that an ordinary commercial corporation, not doing a public service business, can alienate its entire property when it is necessary or proper to do so for the best interests of its stockholders and creditors.[2] In 1903 the legislature changed that rule[3] by providing that "no sale, lease, assignment, transfer, or conveyance of the business, franchise and property, as a whole, of any corporation" shall be valid without the consent of two thirds of the stockholders.

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[9] Stats. 1907, p. 745, Gen. Laws of Cal., Act 757, sec. 10a.

[10] Newhall v. Western Zinc Min. Co., (1912) 164 Cal. 380; 128 Pac. 1040.

[11] Brandon v. Umpqua Lumber Co., (October 14, 1913) S. F. No. 6529. "The Recorder", October 16, 1913.

[12] Brandon v. Umpqua Lumber Co., supra.

[13] Cal. Law Rev., Vol. 1, No. 3, p. 266.

[1] Shaw v. Hollister Land and Improvement Co., (October 2, 1913) 46 Cal. Dec. 316.

[2] South Pasadena v. Pasadena Co., (1908) 152 Cal. 579, 93 Pac. 490.

The principal case decides that the sale of all of the tangible property is not necessarily a sale of the business in which the corporation is engaged and is not within the provisions of the code. The good will of the business was not included in the transfer. Decisions under this section are few, and consequently there are a number of questions undecided by the courts. It has been held that the section was intended to cover the transfer of the business, property, and franchises, other than the franchise to be a corporation.[4]

In the principal case it was suggested in the argument, and commented on, but not decided by the court, that no transfer would be within the code section unless it was a transfer which embraced a franchise. This question is connected with another also suggested in argument in the case of South Pasadena v. Pasadena Land Co.,[5] that is, that if taken literally the code section would give power to transfer the corporate franchise, the right to be a corporation and do business in that capacity. To deal with the second question first, it seems to be the general rule that the franchise to be a corporation cannot be transferred without the consent of the state.[6] Does the code section in question give the consent of the state? It is submitted that it probably does not. In states where the question has been raised the courts have construed the statute strictly. "The power to sell or mortgage the primary franchise will not be implied from authority in a statute to sell or mortgage 'the property and franchises, of a corporation."[7] The franchise to be a corporation cannot be taken on execution in this state.[8] If the section does not include the right to transfer the right to be a corporation the first question suggested must also be answered in the negative. Very few of the ordinary commercial corporations have franchises other than the primary franchise to be a corporation. The question is practically answered in a case decided by the District Court of Appeal for the First District of California,[9] in which the court passes favorably on the lease of the real and personal property and business of the corporation, executed with the approval of two thirds of the stockholders. There was no franchise included in the transfer. The general purpose of the code section requiring the consent of two thirds of the stockholders seems to be the protection of the stockholders in those cases where a transfer of the property and business as a whole would mean a practical dissolution or loss of opportunity to exercise their corporate privileges.

M. C. L.

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[3] Civil Code of California, sec. 361a.
[4] Note 2 supra.
[5] Note 2 supra.
[6] Wood v. Truckee Turnpike Co., (1864) 24 Cal. 474; 3 Thompson, Corporations, Sec. 2900.
[7] 3 Thompson, Corporations, Sec. 2902.
[8] Civil Code, California, Sec. 388.
[9] McTigue v. Arctic Ice Cream Co., (Dec. 1912) 16 Cal. App. Dec. 30, 130 Pac. 165.